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10/620,235	07/15/2003	Mark Dronge	126,1001	8521

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EXAMINER	
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Please find below and/or attached an Office communication concerning this application or proceeding.

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BEFORE THE BOARD OF PATENT APPEALS AND INTERFERENCES

Application Number: 10/620,235
Filing Date: July 15, 2003
Appellant(s): DRONGE, MARK

Brian Roffe
For Appellant

EXAMINER'S ANSWER

This is in response to the appeal brief filed 1/11/07 appealing from the Office action mailed 10/25/05.

(1) Real Party in Interest

A statement identifying by name the real party in interest is contained in the brief.

(2) Related Appeals and Interferences

The examiner is not aware of any related appeals, interferences, or judicial proceedings which will directly affect or be directly affected by or have a bearing on the Board's decision in the pending appeal.

(3) Status of Claims

The statement of the status of claims contained in the brief is correct.

(4) Status of Amendments After Final

The appellant's statement of the status of amendments after final rejection contained in the brief is correct.

(5) Summary of Claimed Subject Matter

The summary of claimed subject matter contained in the brief is correct.

(6) Grounds of Rejection to be Reviewed on Appeal

The appellant's statement of the grounds of rejection to be reviewed on appeal is correct.

(7) Claims Appendix

The copy of the appealed claims contained in the Appendix to the brief is correct.

(8) Evidence Relied Upon

3820434	Roberts	6-1974
5492044	Sperzel	2-1996

5268971 Nilsson et al 12-1993

(9) Grounds of Rejection

The following ground(s) of rejection are applicable to the appealed claims:

Claims 8, 12, 17, and 13 are rejected under 35 U.S.C. 103(a) as being unpatentable over Roberts in view of Sperzel.

Roberts discloses the use of a set of six strings for a musical string instrument comprising at least four strings having a color different than the color of the other of said strings in the set (see column 2 , lines 25-35), said strings being adapted to be mounted on the instrument to enable playing of the instrument. Roberts also discloses that by association of a colored note and finger indicia on a sheet of music to the colors of the said strings is well known in the art (see column 1, lines 25-30).

Roberts does not disclose the use of a string size different than the size of the other strings.

Sperzel discloses the use of a set of uncolored strings for a musical instrument with a string size different than the size of the other strings is well known in the art (column 3, lines 60-65).

It would have been obvious to one of ordinary skill in the art at the time the invention was made to modify the colored strings as disclosed by Roberts with the varying string size as disclosed by Sperzel in order to produce an efficient means of teaching a musical instrument using a variance of notes.

Claims 9 and 14 are rejected under 35 U.S.C. 103(a) as being unpatentable over Roberts in view of Sperzel and Nilsson et al.

Roberts and Sperzel do not disclose the use of a core string wrapping to provide the color of the string.

Nilsson et al discloses the use of wires that are covered by color-coded binders and the covered by Mylar covering. Nilsson also discloses that strength yarns may also be wrapped around the wire (column 6, lines 21-31).

It would have been obvious to one of ordinary skill in the art at the time the invention was made to modify the colored wire as disclosed by Roberts with the different sizes as disclosed by Sperzel and the wrapping techniques as disclosed by Nilsson in order to provide a string with different coloring.

(10) Response to Argument

With regards to the applicant's arguments that there is an absence of teaching or suggestion in the prior art and in response to applicant's argument that there is no suggestion to combine the references, the examiner recognizes that obviousness can only be established by combining or modifying the teachings of the prior art to produce the claimed invention where there is some teaching, suggestion, or motivation to do so found either in the references themselves or in the knowledge generally available to one of ordinary skill in the art. See *In re Fine*, 837 F.2d 1071, 5 USPQ2d 1596 (Fed. Cir.

1988)and *In re Jones*, 958 F.2d 347, 21 USPQ2d 1941 (Fed. Cir. 1992). In this case, since Roberts discloses the use of a set of six strings for a musical string instrument comprising at least four strings having a color different than the color of the other of said strings in the set (see column 2 , lines 25-35), said strings being adapted to be mounted on the instrument to enable playing of the instrument and Sperzel disclosing the use of a set of uncolored strings for a musical instrument with a string size different than the size of the other strings is well known in the art (column 3, lines 60-65) the examiner maintains that it would have been obvious to one of ordinary skill in the art at the time the invention was made to modify the colored strings as disclosed by Roberts with the varying string size as disclosed by Sperzel to provide a teaching means for a musical instrument using specific tonal characteristics since Sperzel discloses in column 3, lines 60-65 that strings with different diameters are conventional. Since guitar strings are well known to have different diameters one of ordinary skill in the art would in fact be motivated to use the colored strings as disclosed by Roberts with the conventional string varying diameters as disclosed by Sperzel in order to assist a musician in learning.

With respects to the applicant's arguments regarding commercial success and long felt need, the examiner has considered the applicant's arguments and with regards to commercial success the applicant isn't entitled to exclusive rights because of commercial success. The obviousness of the device does not overcome "commercial success." Applicant has not demonstrated an adequate showing of a significant improvement in sales over the prior art. Applicant merely states that he has sold a

certain number of products and that the prior art does not have the string colors as claimed by applicant. With regards to the commercial success and long felt need the examiner maintains that it would have been obvious to one of ordinary skill in the art at the time the invention was made to modify the colored strings as disclosed by Roberts to include the varying diameters as disclosed by Sperzel since guitar strings with varying diameters are very conventional and well known in the art.

In response to applicant's argument that the Nilsson reference is nonanalogous art, it has been held that a prior art reference must either be in the field of applicant's endeavor or, if not, then be reasonably pertinent to the particular problem with which the applicant was concerned, in order to be relied upon as a basis for rejection of the claimed invention. See *In re Oetiker*, 977 F.2d 1443, 24 USPQ2d 1443 (Fed. Cir. 1992). In this case, Nilsson et al discloses the use of that use of wires that are covered by color-coded binders and the covered by Mylar covering. Nilsson also discloses that strength yarns may also be wrapped around the wire (column 6, lines 21-31). It would have been obvious to one of ordinary skill in the art at the time the invention was made to modify the strings as disclosed by Roberts and Sperzel in order to provide a guitar colored string wire/string.

(11) Related Proceeding(s) Appendix

No decision rendered by a court or the Board is identified by the examiner in the Related Appeals and Interferences section of this examiner's answer.

For the above reasons, it is believed that the rejections should be sustained.

Respectfully submitted,

KIMBERLY LOCKETT
PRIMARY EXAMINER

Examiner Kim Lockett

Conferees:

Lincoln Donovan

Drew Dunn